




Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

WORKING SESSION MEMORANDUM

DATE: October 7, 2011

TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development
Jennifer Molinsky, Chief Planner for Long-Range Planning
Seth Zeren, Chief Zoning Code Official 

RE: #64-11 HIS HONOR THE MAYOR, in coordination with the Director of Planning and Development, requesting to amend Section 30-15, Table 4, Dimensional Controls for Rear Lot Development in Residential Zones as they pertain to floor area ratio.

CC: Mayor Setti D. Warren
Board of Alderman
Planning and Development Board
Marie Lawlor, Assistant City Solicitor

EXECUTIVE SUMMARY

Last February the Board of Aldermen passed revisions to the floor area ratio (FAR) rules that govern residential density and mass for single-family and two-family dwellings in order to create a fair system for balancing the right to modest additions with the desire to preserve neighborhood character. When this amendment was drafted and considered, it became clear that the City's existing rules concerning rear lot FAR would also need revision. This petition seeks address a conflict between the existing rear lot FAR rules and the new FAR rules. Currently, rear lot development is not a major issue; the City receives approximately one application per year for a new rear lot development. The Planning Department considered a range of possible amendments in response to two policy questions: 1) Should the limits be more, less, or as restrictive as before? and 2) Should a waiver from these FAR limits be allowed by special permit from the Board of Aldermen (currently not allowed)? The Planning Department recommends a simple solution: keep the FAR limits in Section 30-15 Table 4 the same, while inserting a provision into Section 30-15(r) which allows a waiver by special permit, and removing a conflict with the new FAR rules in Section 30-15(u). This approach is flexible, preserves the City's existing approach to rear lot development, and is appropriate for the magnitude of the problem.

BACKGROUND

In the spring of 2009, Ordinance Z-44 deleted Section 30-15, Table 1, Footnote 7 for the City's Zoning Code. This change was made in response to concerns from members of the Board of Aldermen and others that this provision created a loophole, which allowed the construction of houses exempt from FAR controls and out of scale and character with their neighborhoods. After the elimination of the Footnote 7 exception, many additions and renovations of existing residential structures, which had previously not been subject to FAR, were required to meet FAR standards.

In response, the Board of Aldermen convened a working group to develop a solution to regulating residential FAR and, in the meantime, created temporary bonuses for existing homes and older lots. In the fall of 2010 the FAR Working Group presented its recommendations for how residential FAR could be reformed and in February of 2011, the Board of Aldermen passed Ordinance Z-77, which includes a new way of measuring residential floor area (which includes accessory structures and more features that contribute to the overall "mass" of a structure), while allowing more total FAR on a sliding scale, with smaller lots receiving the largest increases. Z-77 was passed with an eight-month data collection period before coming into effect on October 15, 2011.

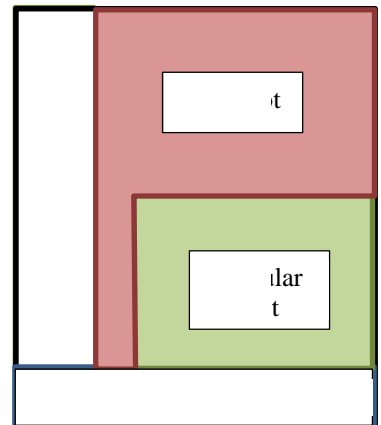
In revising the residential FAR allowances in Section 30-15, Table 1, the Working Group did not consider whether there should be a corresponding increase in allowed FAR for dwellings on "rear lots" in Section 30-15, Table 4. This petition was filed to address whether the FAR limits for rear lots should be changed in a corresponding fashion as regular lots under the new FAR rules and to resolve an unanticipated conflict between the sections.

ANALYSIS OF REAR LOT AND FAR REGULATIONS

A "rear lot" is a lot which lacks adequate frontage and accesses the street via a panhandle or flag-pole shaped portion of land or through an easement over a lot in front. Section 30-15(r) of the Ordinance allows for the creation of a rear lot by special permit and includes a definition of rear lot. Most of the rear lots in Newton predate this provision. So long as a pre-existing lot was legally created and has 50 feet of frontage (as measured when it was created, i.e. "lot width") then it may be developed by right, employing the requirements of Section 30-15, Table 1.

New rear lots created by Section 30-15(r) must meet the requirements of Table 4 in Section 30-15. The allowed FAR in Table 4 is currently significantly lower than the standards for lots in the same zone under the pre-October 15 FAR rules. In addition, under the old rules, there is no special permit option to exceed the allowed FAR in Table 4, as is allowed for regular lots—with two exceptions: 1) Properties which provide at least one inclusionary unit may receive a waiver to use the standards of Table 1; and 2) where an existing historic structure is to be preserved the Board may waive required setback distances. (To our knowledge, no property has used either provision.)

On October 15, the new FAR rules will come into effect, per Section 30-15(u). These rules apply to "all one and two family structures, whether new or existing, according to the FAR limits contained in Table A," in residential districts. This seems to imply a conflict whereby the rules of Section 30-15(u) would apply to rear lots (including the provisions for a sliding scale of allowed density in Table A and an option for a waiver through special permit) at the same time as the existing rules for rear lots in Section 30-15(r) and Table 4. It is unclear which of these conflicting provisions should take precedence.



POLICY OPTIONS AND DISCUSSION

in resolving this conflict, there are two policy questions at stake:

Question 1: Should the FAR limits on rear lots be:

- a. More restrictive than as currently applied?
- b. About as restrictive as currently applied?
- c. Less restrictive than currently applied?

Question 2: Should there be an allowance for a waiver by special permit?

- a. No (leave as it is, restrictive hard boundary)
- b. Yes (policy change, gives flexibility)

Depending on the pair of answers to these questions, a range of regulatory fixes could be applied:

	More restrictive	About as restrictive	Less restrictive
Flexible (Allow waiver by SP)	No change to Table 4; add an exception to 30-15(r) allowing waiver of FAR by SP; revise 30-15(u) to exclude rear lots	Increase the allowed ratio in Table 4; add an exception to 30-15(r) allowing waiver of FAR by SP; revise 30-15(u) to exclude rear lots	Keep 30-15(u) as is; modify 30-15(r) and Table 4 to reference 30-15(u)
Inflexible (No waiver by SP)	Revise 30-15(u) to exclude rear lots; leave 30-15(r) and Table 4 as is	Increase the allowed ratio Table 4; revise 30-15(u) to exclude rear lots	Keep 30-15(u) as is; state that rear lots cannot receive special permit under 30-15(u); modify 30-15(r) and Table 4 to reference 30-15(u)

In considering this petition, the Planning Department has been mindful of the magnitude of this issue (there is approximately one application for a special permit per year to allow development on an existing or new rear lot). Given this, we have looked for the least invasive, simplest change possible, which largely preserves the existing regulations. The above matrix lays out this range of potential solutions. The purpose of Section 30-15(r) states an original concern with the impacts of rear lot development on adjacent residential uses. The allowed FAR is most significant if no special permit waiver from the FAR limit is allowed; this creates a hard cap on potential development. Without allowing a special permit waiver, retaining the current number would result in smaller allowed houses than are currently allowed. Allowing houses to be approximately the same size could be achieved by raising the allowed FAR limit. The least restrictive approach would be to grant rear lots the same FAR as regular lots (though a special permit would still be required in order to create a rear lot).

If the Committee prefers the middle “about as restrictive” column a decision must be made on how to increase the allowed FAR in Table 4. There are two obvious options: 1) increase it by a flat rate across all categories (perhaps .05), or 2) institute a gradation by lot size similar to that done for regular lots under the new FAR rules (+12% for SR1, +10% for SR2, and +16 % for SR3). However, there is not any clear-cut way to determine whether the allowed ratio is the “right” number; investing a large amount of energy in identifying the “right” number would be disproportionate to the scale of the problem.

If a special permit waiver of the FAR limit is allowed, then along with the special permit for a rear lot development, a project could request an FAR waiver at the same time and the Board could decide based on the merits of the design.

RECOMMENDATION AND CONCLUSION

Given the above considerations, the Planning Department recommends the “more restrictive” but “flexible” option from the table above. We do not find a compelling reason to raise FAR limits for rear lot development beyond what might be consistent with the increases built into the sliding scale that will take effect on October 15 and therefore recommend against either option in the “less restrictive” approach in the table above.

Under the recommended approach, Section 30-15(u) would be amended to clearly exclude rear lots, no changes would be made to the allowed FAR in Table 4, but a provision would be added to Section 30-15(r) to allow an exception from the FAR rules by special permit from the Board of Aldermen. This approach avoids lengthy debate over setting the right number citywide, and instead gives flexibility in modifying the now more restrictive allowed FAR of Table 4 through the special permit on a case-by-case basis. No additional process is created by allowing a special permit exception to the FAR limits in Table 4, as the creation of a new rear lot already requires special permit approval. The Planning Department believes that this is the best way to resolve the conflict between Sections 30-15(r) and 30-15(u).